

**REMARKS**

Applicants cancelled claims 36 and 37, without prejudice or disclaimer of their subject matter, and amended claims 24 and 40 to each include recitations from now-cancelled claims 36 and 37. Upon entry of this Amendment, claims 24-35 and 38-46 remain pending and under examination.

Applicants respectfully traverse the rejections made in the Office Action, wherein the Examiner:

- (1) rejected claims 24-26, 40, 45, and 46 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,556,659 (“*Bowman*”);
- (2) rejected claims 27-30 and 36-39 under 35 U.S.C. § 103(a) as being unpatentable over *Bowman* in view of U.S. Patent Application Pub. No. 2003/0126256 (“*Cruickshank*”);
- (3) rejected claims 41-44 under 35 U.S.C. § 103(a) as being unpatentable over *Bowman* in view of U.S. Patent No. 7,142,512 (“*Kobayashi*”); and
- (4) rejected claims 31-35 under 35 U.S.C. § 103(a) as being unpatentable over *Bowman* in view of *Cruickshank*, and further in view of *Kobayashi*.

**Rejection of Claims 24-26, 40, 45, and 46 under 35 U.S.C. § 102(b):**

Applicants request reconsideration and withdrawal of the rejection of claims 24-26, 40, 45, and 46 under 35 U.S.C. § 102(b) as being anticipated by *Bowman*.

In order to establish anticipation under 35 U.S.C. § 102, the Office Action must show that each and every element as set forth in the claim is found, either expressly or inherently described, in *Bowman*. See M.P.E.P. § 2131. *Bowman*, however, does not disclose each and every element

of Applicants' claims. Specifically, *Bowman* does not disclose or suggest at least Applicants' claimed

processing said static and dynamic network information to obtain at least a geometric saturation index indicative of a degree of use of said cables in terms of said broadband transmissive systems supported by said cables and a transmissive saturation index indicative of a transmissive status of said cables in terms of a bit rate of said broadband transmissive systems supported by said cables,

as recited in claim 24 (and similarly in claim 40).

Instead, *Bowman* discloses a Service Level Management system which handles service level problem in a packet-switching and circuit-switching hybrid network. *See Bowman*, Abstract. However, *Bowman* does not disclose anything about a geometric saturation index, nor a transmissive saturation index. In fact, although the Office Action did not expressly admit that *Bowman* fails to disclose the above-quoted claim elements, the Office Action implied that only *Cruickshank* allegedly teaches these features. *See* Office Action, page 6, items 16 and 17.

Since *Bowman* does not disclose each and every element of independent claim 24, *Bowman* does not anticipate Applicants' independent claim 24 under 35 U.S.C. § 102(b). Therefore, independent claim 24 should be allowable over *Bowman*. Independent claim 40, while of different scope, contains recitations similar to independent claim 24, and should also be allowable for at least the same reasons as independent claim 24. In addition, dependent claims 25, 26, 45, and 46 should be allowable at least by virtue of their respective dependence from independent claim 24 or 40. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection.

**Rejection of Claims 27-30 and 36-39 under 35 U.S.C. § 103(a):**

Applicants request reconsideration and withdrawn of the rejection of claims 27-30 and 38-39 under 35 U.S.C. § 103(a) as being unpatentable over *Bowman* in view of *Cruickshank*.

The rejection of claims 36 and 37 is moot by virtue of their cancellation, though Applicants respond below to the extent that recitations from these claims are now presented in independent claim 24.

The Office Action has not properly resolved the *Graham* factual inquiries, as required to establish a framework for an objective obviousness analysis. *See M.P.E.P. § 2141(II)*, citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007). In particular, the Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because the Office Action has not interpreted the prior art and considered *both* the invention *and* the prior art *as a whole*. *See M.P.E.P. § 2141(II)(B)*.

As explained above, Applicants have established that *Bowman* does not disclose or suggest at least Applicants' claimed

processing said static and dynamic network information to obtain at least a geometric saturation index indicative of a degree of use of said cables in terms of said broadband transmissive systems supported by said cables and a transmissive saturation index indicative of a transmissive status of said cables in terms of a bit rate of said broadband transmissive systems supported by said cables,

as recited in claim 24. However, the Office Action alleged that paragraphs [0007] and [0022] of *Cruickshank* teach Applicants' claimed "geometric saturation index indicative of a degree of use of said cables in terms of said broadband transmissive systems supported by said cables" and "transmissive saturation index indicative of a transmissive status of said cables in terms of a bit rate of said broadband transmissive systems supported by said cables," as recited in now-cancelled claims 36 and 37, respectively (these recitations now present in claim 24). *See* Office Action, page 6. Applicants respectfully disagree.

*Cruickshank* does not cure the deficiencies of *Bowman*. For example, *Cruickshank* discloses a system for monitoring and evaluating network performance by calculating metrics which are measurements of network performance based on raw data. *See Cruickshank*, par. [0021]. *Cruickshank* further discloses that the network performance values are based on network impact and network topology. *See Cruickshank*, par. [0022]. However, the values related to the network topology are different from Applicants' claimed "geometric saturation index indicative of a degree of use of said cables in terms of said broadband transmissive systems supported by said cables." For example, *Cruickshank* discloses that the "network topology includ[es] location of nodes, network elements, and high-frequency coax (HFC) node combining plans." *Cruickshank*, par. [0029]. That is, *Cruickshank*'s network topology only contains information of locations of different network elements. This is clearly different from "a degree of use of said cables," as recited in amended claim 24.

Moreover, values related to the network impact do not constitute Applicants' claimed "transmissive saturation index." For example, *Cruickshank* discloses that "[v]alues related to network impact are determined for the lowest levels of networks, and based upon the topology of the network, the values for lower levels are combined to yield cumulative values for higher and higher levels, until a summary level is achieved, yielding a DMH [Degraded Modem Hours] and an SDMH [Severely-Degraded Modem Hours] for the network as a whole." *Cruickshank*, par. [0022]. *See also Cruickshank*, par. [0021]. That is, the values related to the network impact disclosed by *Cruickshank* are indications of degraded and severely-degraded hours of network modems. This is clearly different from Applicants' claimed "transmissive status of said cables in terms of a bit rate of said broadband transmissive systems," as recited in amended claim 24.

Therefore, *Bowman* and *Cruickshank*, taken either alone or in combination, fail to teach or suggest at least the above-quoted recitations of Applicants' claim 24. Thus, the Office Action

has not properly ascertained the differences between the prior art and the claimed invention. Independent claim 24 should therefore be allowable over *Bowman* and *Cruickshank*. Dependent claims 27-30 and 38-39 should also be allowable at least by virtue of their dependence from base claim 24. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

**Remaining Rejections of Claims 31-35 and 41-44 under 35 U.S.C. § 103(a):**

Applicants request reconsideration and withdrawn of the remaining rejections of claims 31-35 and 41-44 under 35 U.S.C. § 103(a) as being unpatentable over *Bowman* in view of one or more of *Cruickshank* and *Kobayashi*. As discussed above, *Bowman* and *Cruickshank*, taken either alone or in combination, fail to render obvious at least Applicants' independent claim 24.

*Kobayashi* does not cure the deficiencies of *Bowman* and *Cruickshank*. For example, *Kobayashi* discloses a network measurement controlling system comprising a meter which receives packets from a network and measures the number of packets. *See Kobayashi*, Abstract. However, *Kobayashi* does not disclose or suggest Applicants' claimed

processing said static and dynamic network information to obtain at least a geometric saturation index indicative of a degree of use of said cables in terms of said broadband transmissive systems supported by said cables and a transmissive saturation index indicative of a transmissive status of said cables in terms of a bit rate of said broadband transmissive systems supported by said cables,

as recited in claim 24. Thus, the Office Action has not properly ascertained the differences between the prior art and the claimed invention.

Applicants therefore submit that independent claim 24 is not obvious over *Bowman*, *Cruickshank*, and *Kobayashi*, whether these references are taken alone or in any combination. Independent claim 40, while of different scope, contains recitations similar to independent claim 24, and should also be allowable for at least the same reasons as independent claim 24.

Therefore, dependent claims 31-35 and 41-44 should also be allowable at least by virtue of their respective dependence from base claim 24 or 40. Accordingly, Applicants respectfully request withdrawal of the remaining 35 U.S.C. § 103(a) rejections.

**Conclusion:**

Applicants request reconsideration of the application and withdrawal of the rejections.

Pending claims 24-35 and 38-46 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the related claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any such statements or characterizations in the Office Action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

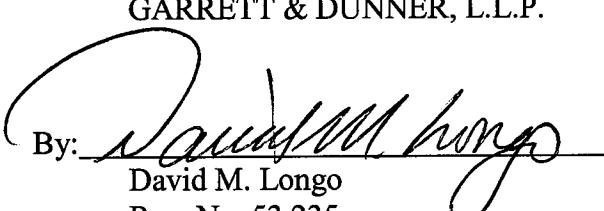
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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